

**DEPARTMENT OF STATE REVENUE  
LETTER OF FINDINGS: 00-0362  
Indiana Individual Income Tax  
For the Year 1998**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of the document will provide the general public with information about the Department's official position concerning a specific issue.

**ISSUE**

**I. Individual Income Tax Deficiency Carry-Over.**

**Authority:** IC 6-8.1-5-1(a); IC 6-8.1-5-1(b); IC 6-8.1-5-2(a).

Taxpayers argue that the alleged income tax deficiency – first reported to them in 1999 – was the result of an under-reporting error attributable to the Department of Revenue (Department). Taxpayers maintain that the 1999 deficiency can be traced to the Department's failure to properly record one of taxpayers' 1995 estimated quarterly tax payments.

**STATEMENT OF FACTS**

The Department sent taxpayers a "Notice for Payment" dated October 7, 1999. The notice indicated that taxpayers owed an additional amount of 1998 state income taxes. According to the taxpayers, they determined that they did not owe the taxes but that the purported 1998 deficiency was entirely attributable to the Department's own recording error which occurred during 1995.

The taxpayers and the Department exchanged correspondence and phone calls but were unable to resolve the disputed issue. The taxpayers eventually submitted a protest, an administrative hearing was conducted during which taxpayers' representative explained the basis for their protest, and this Letter of Findings results.

**DISCUSSION**

**I. Individual Income Tax Deficiency Carry-Over**

Taxpayers argue that the alleged 1998 tax deficiency is attributable to the Department's own record-keeping error. In addition, taxpayers argue that because the Department's under-reporting error occurred in 1995, the claim for 1998 income taxes – first submitted to the taxpayers in 1999 – is untimely and is barred by the statute of limitations.

It is undisputed that the taxpayers made quarterly estimated income tax payments during 1995. According to taxpayers, the Department failed to properly record one of these 1995 payments. However, the 1995 shortfall did not become immediately apparent because of the manner in which taxpayers elected to pay their individual state income taxes. The 1995 shortfall did not become immediately apparent because taxpayers continued to make timely, successive quarterly estimated payments for the years following 1995. These successive payments had the effect of “covering” the original 1995 deficiency. However, the 1995 deficiency was never eliminated; it was simply obscured by each subsequent quarterly tax payment. The 1995 deficiency “dominoed” its way through the years and did not manifest itself until 1998.

Taxpayers maintain the Department should abate the assessment for 1998 taxes because the Department failed to properly credit the taxpayers for the 1995 quarterly payment. However, because of the lapse in time and because the taxpayers have dealt with different bank entities during the period, taxpayers are unable to now produce information which confirms taxpayers’ version of these events.

IC 6-8.1-5-1(a) states that, “If the department reasonably believes that a person has not reported the proper amount of tax due, the department shall make a proposed assessment of the amount of the unpaid tax on the basis of the best information available to the department.” If the department believes that the person has not paid the proper amount of tax, “The department shall send the person a notice of proposed assessment through the United States mail.” *Id.* This is what apparently occurred during 1999 at the time taxpayers received written notice from the Department. Nonetheless, taxpayers argue that the Department is simply wrong. Taxpayers steadfastly maintain that they paid all of the quarterly income tax payments and that they owe no additional tax.

Indiana’s statute provides that, “The notice of proposed assessment is prima facie evidence that the department’s claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made.” IC 6-8.1-5-1(b).

The Department has no reason whatsoever to doubt the taxpayers’ good faith or veracity. However, even considering the undoubted difficulty in producing evidence of bank transactions long-past, the Department is in no position to grant taxpayers the requested relief. The statute clearly places upon taxpayers the burden of demonstrating that the 1999 notice of assessment was wrong. For the Department to now ignore this standard and abate the assessment entirely on the basis of the taxpayers’ say-so would fly in the face of the dictate imposed under IC 6-8.1-5-1(b).

Taxpayers posit a secondary argument. Because they did not receive notice of the proposed assessment until October 1999 and because the assessment is now attributable to a disputed 1995 quarterly payment, the 1999 assessment was untimely and is barred by the three-year statute of limitations.

The limitations period is defined under IC 6-8.1-5-2(a) which states that, “Except as otherwise provided in this section, the department may not issue a proposed assessment under section 1 of this chapter more than three (3) years after the latest of the date the return is filed or any of the following: (1) the due date of the return.” IC 6-8.1-5-2(a). According to taxpayers, because the 1999 assessment can be traced to an alleged underpayment of 1995 taxes – presumably due no later than April 15, 1996 – the Department’s assessment – dated October 7 – is void pursuant to IC 6-8.1-5-2(a).

Taxpayers’ argument fails because the October 7, 1999, correspondence was not a notice that taxpayers owed 1995 income tax. It was a notice that taxpayers owed additional 1998 income taxes. The 1998 shortfall can be traced back to a mistake which occurred during 1995, but the Department provided timely notice that taxpayers were required to pay 1998 taxes. Evidently, taxpayers’ first 1996 quarterly payment was sufficient to cover the original 1995 deficiency; for approximately three years, each successive quarterly payment covered the previous shortfall until – for whatever reason – the deficiency found its way to the surface, and the Department determined that taxpayers did not pay all of their 1998 income taxes. It was not until 1998 that the Department reasonably believed that taxpayers had not reported the amount of tax due. The October 7, 1999, was timely submitted, and the proposed assessment is not barred by the three-year limitations period specified under IC 6-8.1-5-2(a).

### **FINDING**

Taxpayer’s protest is respectfully denied.